App. F. IX-4

Previous References

File No. 36-37

Serial Nos. (-2

Letter Reference.

GENERAL AND REVENUE SECRETARIAT.

Serial Nos. 2

Part B for September 1937

SUBJECT.

Amendment of rule 63 order XXI of Civil Procedure Code

Group 13 17 & 2-9-37

Court

WD 0418—GPB—22,500—29-8-36

Sanctioned

GENERAL AND REVENUE SECRETARIAT.

(Protecting)

NOTES.

File No. 36

FILE HEADING

Amendment of Rule 63 Order XXI of C. Pr. Code.

FROM The Registrar, High Court of Mysore.

R O.C.No. 1267/36-37 Dated 26th July 1937 Received 27-7-37.

Diary No. — Enclos. Spare copies — Serial No. 1

BRIEF ABSTRACT OF LETTER

Requests sanction to the amendment of the Rule 63 Order XXI as shown in the appendix

NOTES AND ORDERS.

Draft G. O. put up.

Mul. 30.7.

Rule 31-7-37

The High Court with the concurrence of the Rule Committee proposes the amendment of O 21 R 63 of the Code of Civil Procedure by to bring it in conformity with the provision of Sec 11 of the Limitation Regulation

WD 0245—GPB—2,500—23-8-32

~ Amendment of Rule - Civil Procedure Code

674

CS File No. 36 of 1937

General and Revenue Secretariat

As regards the limitation in such Cases the law in Mysore is different from what it is in British India. In B.I Art 11 applies to Cases of claim after and pleader investigation. Whereas in Mysore Art 11 applies only to Cases of claim after investigation

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The wordings of O21. R63 in both places are the same. In B.I O21.R63 is more applicable to Cases of both kinds of claim referred to above. The High Court proposes to confine O21.R63 to Cases of claim after investigation only, to be uniform with Art 11 of the Limitation Regulation.

The proposal of the High Court may be sanctioned

(Chief Secy)

Draft may be apld. 24.8

(1st member)

25 AUG 1937 GOVT. OF MYSORE.

26/8

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27/8

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TYPING SECTION 27 AUG. 1937 GENL SECTT.

To

The Regr H.C.

P 1317 of 2.9.37

Sanctions the proposal of the High Court re the amendment of Rule 63 of order XXI of Civil ~~Rules of Practice~~ procedure Code

B 29/8

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36-37
36-37-3

R. O. C. No. 1267/36-37
~~D. Dis.~~

HIGH COURT OF MYSORE,
Public Office Buildings, Cubbon Park,
Bangalore, 24th July 26th *193*

FROM

Shamiengar, Esq., B.A., B.L.,
~~Sundararaja Rao, Esq., B.A.,~~
~~S. Venkata Ranga Iyengar, Esq., B.A., LL.M.,~~
Registrar, High Court of Mysore.

CHIEF SECRETARY'S OFFICE 27 JUL 1937 GOVT. OF MYSORE.

B. T. Kesavaiengar, Esq.,B.A.,
Chief Secretary to the Government of Mysore,
BANGALORE.

SIR,

I am directed to state that Order XXI. Rule 63 of the Code of Civil Procedure, says that 'where a claim or an objection is preferred, the party against whom an order is made may institute a suit to establish the right which he claims to the property in dispute, but, subject to the result of such suit, if any, the order shall be conclusive'. Under Article 11 of the Limitation Regulation, for filing a suit by a person against whom an order has been made under the Code of Civil Procedure after investigation of a claim preferred to, or an objection made to the attachment of, property attached in execution of a decree, to establish the right which he claims to the property comprised in the order, the limitation is one year from the date of the order.

It has been held in 30 Mysore Chief Court Reports 69 and 31 Mysore Chief Court Reports 197 that where a claim petition has been disposed of without investigation, that is to say, not on merits, a suit for the setting aside of the order passed in the claim case is not governed by Article 11 of the Limitation Regulation and it need not be brought within one year from the date of the order.

But Order XXI Rule 63 of the Code of Civil Procedure as it stands is general in its terms and appears to apply to all orders passed in claim cases whether passed on merits or otherwise. If, as has been held in the above cases, Article 11 of the Limitation Regulation is not applicable to cases where orders are passed not after investigation, then any such order shall not be conclusive as regards the party against whom that order is made even though no suit is filed

the date of the order.

Article 11 of the Limitation Regulation applies only to suits contemplated by Rule 63 of Order XXI of the Code of Civil Procedure. In order to bring the provisions of Article 11 of the Limitation Regulation in conformity with Order XXI, Rule 63, Code of Civil Procedure, in view of the decisions of the Mysore High Court referred to above, it appears to be necessary that Rule 63 of Order XXI, Code of Civil Procedure, should be amended by adding the words 'after investigation' after the words against whom an order is made' as set out in the appendix to this letter.

The proposed amendment has been considered by the Rule Committee who support it. It was published in the Mysore Gazette dated 1st July, 1937 in accordance with Section 122 of the Code; but no objection nor suggestion has been received. I am to request that the Government may be pleased to accord sanction to the proposed amendment under Section 126 of the Code.

I have the honour to be,

Sir,

Your most obedient servant,

REGISTRAR.

KVN.

G. R. S. App. F VI—G 2]

SUBJECT ..... Alms 4/9.

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Diary No. of letter replied to .....

Section No

File No. 36-37

Serial No. 2

General and Revenue Secretariat

( )

193

Proceedings of the Government of His Highness the Maharaja of Mysore.

Date of issue 2.9. 1937

Signed by ..... Sir. N.S.R

Read— Letter R.O.C. no. 1267/36-37 D/ 26 July 1937 from the Registrar, High Court of Mysore, requesting sanction of Govt. to the amendment of Rule 63 Order XXI of Civil Procedure Code, as shown in the appendix, Order thereon. No. for Reasons Explained in his letter.

Order No.

D/

Sanctioned P/317/Genl/

1115/26/8

Chief Secretary to Govt.

May this be—

(i) printed ?

(ii) treated as a standing order ?

(iii) published in the Gazette, English Part ?

(iv) translated ?

(v) placed at the disposal of the press ?

(vi) published in the Gazette Kannada Part ?

The Regr, H.C.

Mr 30.7.

by 24-8

Proceedings of the Government of His Highness
the Maharaja of Mysore.

R e a d :-

Letter R.O.C.No.1267/36-37 dated 26th July 1937 from the Registrar, High Court of Mysore, requesting sanction of Government to the amendment of Rule 63 Order XXI of Civil Procedure Code, as shown in appendix, for reasons explained in his letter.

O R D E R NO. Rev I P 1317 CS-36-37-2

Dated, Bangalore, the ~~30th August~~ 2nd Sept 1937.

S A N C T I O N E D.

Chief Secretary to Government.

To

The Registrar, High Court of Mysore.

mk.2

Appendix.

Add the words "after investigation" after the words "against whom an order is made" occurring in line 2 of Rule 63 of Order XXI of the Code of Civil Procedure, 1911.

The rule after amendment will read thus:-

"Where a claim or an objection is preferred, the party against whom an order is made after investigation may institute a suit to establish the right which he claims to the property in dispute, but, subject to the result of such suit, if any, the order shall be conclusive".

Recommended
for Chief Secretary to Government.